

FCC MAIL SECTION

Federal Communications Commission

DA 00-648

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DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-55
Table of Allotments,)	RM-9836
FM Broadcast Stations.)	
(Fredonia and Falconer, New York))	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 15, 2000

Released: March 24, 2000

Comment Date: May 15, 2000

Reply Comment Date: May 30, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by North County Broadcasting, Inc. ("petitioner"), licensee of Station WCQA, Fredonia, New York, requesting the reallocation of Channel 243A from Fredonia to Falconer, New York, as the community's first local aural service, and the modification of Station WCQA's license accordingly. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner contends that the reallocation of Channel 243A to Falconer and concomitant relicensing of Station WCQA would result in a preferential arrangement of allotments. Fredonia and Falconer are located approximately 33 kilometers apart and thus the use of Channel 243A at the two communities are mutually exclusive. Petitioner states that the reallocation would further the Commission's allotment priorities by providing Falconer with its first local aural service, enable Station WCQA to increase its operating power from its present 3 kW to full Class A power of 6 kW, and enable the station to substantially increase the number of people it serves.¹ Petitioner states that Falconer is an incorporated village, with a 1990 U.S. Census population of 2,653 persons. In addition, we are told that Falconer has its own local government, with a mayor, village clerk/treasurer and village trustees, and its own school system, the Falconer School District. Petitioner states that, with an enrollment of 1,508 students, the school district is comprised of three area schools, two elementary and one junior/senior high school. Falconer also has a number of churches, such as the Falconer First Wesleyan, First United Methodist and Bethlehem Lutheran, its own post office and unique zip code, businesses, such as the Falconer Foods BBQ & Catering, Falconer Electronics and Falconer News. Fredonia, with a 1990 U.S. Census population of 10,436 persons, will continue to receive local aural service from noncommercial educational FM Station WCVF and AM Station WBUZ.

¹ The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

3. We believe petitioner's proposal warrants consideration since the allotment of Channel 243A to Falconer could provide the community with its first local aural transmission service without depriving Fredonia of its sole local aural service. Further, we have confirmed that Falconer is not part of any Urbanized Area and that Station WCQA, as a Falconer station at the proposed coordinates, will not provide 70 dBu service to any Urbanized Area. However, since the petitioner proposes to move its transmitter site, we request that it provide us with a study showing the areas and populations which will gain and lose service as well as a study showing the reception services available in both areas. Channel 243A can be allotted to Falconer in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.0 kilometers (2.5 miles) southwest, to accommodate petitioner's desired transmitter site.² Canadian concurrence in this allotment is required since Falconer is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Falconer, New York	--	243A
Fredonia, New York	243A	--

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before May 15, 2000, and reply comments on or before May 30, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Daniel C. Fischer, Vice President
North County Broadcasting, Inc.
P.O. Box 1199
Jamestown, New York 14701
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility

² The coordinates for Channel 243A at Falconer are 42-05-22 NL; 79-13-38 WL.

Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs,

or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.